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Interlocutory Appeals and Early Dismissals: Impact on Appellate Dockets and Other Consequences

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Table of Contents

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It is no secret to appellate practitioners and the members of our judiciary that the number of appeals being pursued from interlocutory orders and other forms of early dismissal rules have steadily increased over the last two decades (1996-2016). But what do the numbers really show, and what does it all mean?

Section I of this paper analyzes the impact of such appeals on our State appellate courts by calculating the number of opinions issued from 1996 to 2016 addressing such issues. My overall findings are presented in the spreadsheet attached as **Appendix A**. Although there is no feasible way to review every single appellate filing arising from such orders over the last two decades (to determine a scientifically exact impact on our dockets), this analysis of the resulting case law provides an interesting overview of what types of interlocutory appeals and other forms of early dismissal are having the greatest impact on our dockets, and why. From this, helpful lessons may be gleaned about practice development, docket management, and legislative action.

Section II considers other consequences that these provisions are having on our practice, including their "tort reform" effect; the increased delays caused by the stay of trial court proceedings pending interlocutory appeal; and changes to the practice of appellate law.

I. DOCKET ANALYSIS:

A. Methodology:

To quantify the overall impact of various types of appeals on our appellate dockets, I reviewed twenty years of opinions issued under multiple statutory provisions and one procedural rule. Namely, these include express interlocutory appeals under Civil Practice and Remedies Code ("CPRC") § 15.003, §§ 51.014(a)(1)-(13), § 51.016, § 150.002, and § 171.098; agreed and permissive interlocutory appeals under CPRC §§ 51.014(d), (f); and appeals from expedited dismissals under Texas Rule of Civil Procedure 91a.[1]

[1] All interlocutory appeals shall proceed on an "accelerated" schedule. *See* Tex. R. App. P. 25.1, 28.2, 35.1, 38.6. Several additional statutes and rules—outside the scope of statistical analysis in this paper—also grant express rights to interlocutory appeal and/or otherwise require that appeals be accelerated. *See, e.g.*, *id*. 24.4 (order setting supersedeas bond or other order regarding suspension or enforcement of judgment); Tex. R. Civ. P. 76a (sealing court records); Tex. R. Crim. P. art. 4.02 (all criminal appeals receive priority); Tex. Bus. Org. Code § 2.106(b) (denial of summary judgment based on nonprofit's immunity); Tex. Elec. Code §§ 231.009, 232.014-.015 (election contests); Tex. Fam. Code § 6.507 (appointment of receiver); *id*. § 33.004 (parental notification of minor's request for abortion); *id*. § 56.01(c)(1) (certain juvenile orders); *id*. § 262.112 (denial of emergency removal of child from home); *id*. §§ 109.002, 263.404-.405 (appointment of TDFPS as managing conservator / termination of parental rights). When considering the overall docket impact of these types of appeals on the workloads of our justices and their staffs, it is important to keep these additional rules and statutes in mind.

My calculations include all opinions issued in appeals where one of the parties argued that one of the foregoing statutes or rules provided as basis for appellate jurisdiction, regardless of whether the court agreed or concluded it lacked jurisdiction. This is because the impact on our dockets is the same whether a party pursues such an appeal rightly or wrongly: It still presents another case for the appellate court to consider and decide. I did my best to include opinions only from appeals pursued on the basis of one of these statutes/rules, eliminating opinions that merely cited to them for some other purpose.

I also attempted to eliminate any double counting of opinions in each of the following situations. First, where two opinions were issued in one case, such as an amended opinion on rehearing, I counted it only once. However, I separately counted opinions in the same case issued by an intermediate court and the supreme court, reasoning that each stage of appeal represents an additional impact on the docket. My statistics are presented globally without separation between intermediate and supreme court opinions. But as you would expect, the number of supreme court opinions is infinitely smaller than intermediate court opinions under every statute. Second, where one opinion cited multiple provisions, I tried my best to include that opinion only once under the provision most relevant to jurisdiction in that case, and eliminate its inclusion from any other provision also cited in the opinion. For some types of interlocutory appeals, the overlap is too significant (such as appeals involving governmental immunity under CPRC §§ 51.014(a)(5) and (8), or TAA and FAA arbitration orders under CPRC §§ 51.016 and 171.098. In those cases, I separately calculated opinions based on both provisions, versus one or the other. Additionally, I collectively counted opinions under subsections (a)(1)-(2) and under subsections (a)(9)-(10) because there are such a large number that discuss both.

Beyond the rules and statutes discussed in footnote 1, there are two additional areas outside the scope of this paper. First, I did not consider any federal opinions arising from these statutes or rules. Although a handful of federal opinions are issued each year regarding these provisions, it is such a small number that it does not warrant an analysis of the impact that these statutes/rules have on our federal appellate dockets. Second, I did not consider the impact of related mandamus filings that may be pursued in addition (alternatively to) interlocutory appeals under these provisions. Thus, this paper is limited to a review of state court opinions.

The resulting statistics are not "hard science," as some level of discretion was applied in determining what to include in the final numbers, and some legal research inquiries returned fuzzy results. But overall, I believe my resulting statistics provide an accurate picture of what impact the specified statutes and rule have had on our appellate dockets over the last two decades.

B. Comprehensive Impact:

As shown by the attached spreadsheet (**Appendix A**), the number of opinions decided each year on the basis of an interlocutory appeal or other early dismissal has increased approximately six-fold from 1996 (total of 58 opinions) to 2016 (total of 336 opinions). The most obvious reason for this vast increase is our Legislature's continuous amendments to expand the scope of statutes allowing for appeals from interlocutory and early dismissal orders. Beyond this broad conclusion, specific analysis related to the docket impact resulting from each provision is discussed in Sections C-E below.

Title search: Interlocutory Appeals and Early Dismissals: Impact on Appellate Dockets and Other Consequences

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